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IN THE
Supreme Court of the United States

OCTOBER TERM, 1951

No. 143

VERNA LEIB SUTTON,

Petitioner,

vs.

R. WELLS LEIB,

Respondent.

**PETITION FOR WRIT OF CERTIORARI AND
SUPPORTING BRIEF.**

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No.

VERNA LEIB SUTTON,

Petitioner,

vs.

R. WELLS LEIB,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT.**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Petitioner prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Seventh Circuit entered upon April 26, 1951, and confirmed upon rehearing May 22, 1951, affirming the decree of the District Court of the United States for the

Southern District of Illinois, Southern Division, rendered upon September 5, 1950.

Opinion Below.

The opinion of the court below entered upon April 26, 1951, and adhered to upon rehearing, is printed in an appendix to this petition, for the convenience of this Court.

Basis of Jurisdiction.

Jurisdiction is invoked under Section 1254 (1) of Title 28 of the United States Code.

The opinion of the United States Court of Appeals for the Seventh Circuit was filed, as stated, upon April 26, 1951; petition for rehearing was duly filed upon May 8; and an order denying the petition for rehearing was entered upon May 22. Application for stay of mandate pending application in this Court for writ of certiorari was made May 28, 1951, and an order staying the mandate for thirty days pending the application for writ of certiorari in this Court was entered May 29, 1951.

Questions Presented.

The questions presented here for determination are important, but may be stated very briefly. They are as follows:

1. A Nevada divorce decree is rendered in favor of a New York resident against his wife, who is neither served with process in Nevada nor appears and contests those proceedings. New York thereafter, in a suit for separate maintenance between such parties where both appear, holds the Nevada divorce decree invalid. *Quaere*, in a

federal court in Illinois, which decree—i. e., the divorce decree in Nevada or the New York decree holding the Nevada decree invalid—is entitled to full faith and credit?

2. The petitioner, the same day as the rendition of the Nevada divorce decree and prior to the rendition of the New York decree, goes through a form of marriage ceremony in Nevada with the husband who procured the Nevada divorce and both immediately return to New York. This was the State of domicile of both such parties both prior to and subsequent to the re-marriage. In a contest between her and such person, New York also enters another decree holding such marriage ceremony bigamous and void, in view of the invalidity of the Nevada divorce. *Quaere*; does the petitioner's void marriage to such New York resident deprive her of alimony from respondent under an earlier Illinois decree requiring respondent to pay alimony "for so long as the plaintiff shall remain unmarried"?

In answering these questions we assign as error the action of the United States Court of Appeals in giving full faith and credit to the Nevada divorce decree and in refusing full faith and credit to the New York decrees, and in holding as a result thereof that the petitioner's attempted remarriage was valid and deprived her of her right to alimony under the Illinois decree.

Summary Statement.

To avoid controversy, we adopt the following statement from the opinion of the United States Court of Appeals, Seventh Circuit which sets up the controlling facts concisely:

"The facts out of which the controversy arose are undisputed. Plaintiff obtained a decree of divorce from defendant in 1939 in an Illinois court.

The decree provided for the payment of \$125 'on or before the first day of each calendar month * * * for so long as the plaintiff shall remain unmarried, or for so long as this decree remains in full force and effect * * *'. After obtaining her divorce plaintiff moved to New York.

"On July 3, 1944, plaintiff married Walter Henzel in Reno, Nevada. Henzel had on that day obtained a decree of divorce in a Nevada court from Dorothy Henzel, a New York resident. She had been served only by publication and did not appear. Immediately following the divorce and remarriage plaintiff and Henzel returned to New York. On August 3, 1944, Dorothy Henzel instituted a separate maintenance proceeding against Walter in a New York court and this proceeding resulted in a decree in her favor, awarding separate maintenance and declaring the Nevada divorce null and void. Plaintiff had ceased living with Henzel immediately after service of summons in Dorothy Henzel's suit against him, and in January 1945 she filed suit against him for annulment of their marriage. On June 6, 1947 the New York court entered an interlocutory decree which became final three months later, declaring the nullity of the marriage of plaintiff and Henzel on the ground that he had another wife living at the time of the marriage. * * * Plaintiff was remarried in November 1947."

The amount of alimony accruing for the period in question amounts to exactly \$5,000.

The reason for the opinion of the Court of Appeals appears clearly in its opinion. It stated, first, that it was unable to find any clear-cut opinion from this Court as to the status occupied by persons standing in the position of the Henzels in the state rendering the divorce

decree, which decree was later held invalid by the state of the parties' domicile. The court then states, "It appears to be assumed that the decree is valid and binding in the state where it is rendered." From this, the court below reasoned that while the Nevada divorce might be regarded as invalid in New York, nevertheless Henzel was divorced so far as Nevada was concerned; and that, by reason thereof, the petitioner's marriage to Henzel was valid in the State of Nevada, and that Illinois would have to recognize that status as controlling under the Illinois decree for alimony, despite the New York adjudication that such marriage ceremony was bigamous and void.

Reasons for Granting the Petition.

This unique case presents a question of great public importance, involving marital status and the full faith and credit clause where three states, rather than two alone, are involved. Matters of family status, marriage, and divorce are of the greatest importance. In addition, it appears that the United States Court of Appeals makes a holding which is squarely contrary to all of the recent decisions of this Court, and any ambiguity existing should be settled with finality.

It seemed to be the opinion of the United States Court of Appeals, as evidenced by its decision, that the decisions of this Court in *Williams v. North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577, and subsequent decisions hold that the decree of the state granting the divorce becomes conclusive, at least within its own boundaries. This is apparently a misconstruction of the language of these decisions. What this Court has held, in those cases, is that no person is entitled to two separate days in court, in order to relitigate the same issues. Thus, if a defendant to a divorce action is served personally in the state rendering the decree, or appears and contests the issues

in that case, the divorce decree is conclusive as to all matters, including jurisdictional questions. This is a vastly different situation than where the defendant to such a proceeding is neither served with process in that state nor appears and submits to the jurisdiction of that court. In such an instance, where the state of the domicile, which was New York in this case, is presented with all of these issues for determination in a suit between the parties wherein both appear and contest the matter—then its decision is controlling as to all issues, including the question of validity of the divorce decree. If the decree of New York was then valid and binding, it is entitled to full faith and credit everywhere, even in the state which had rendered the divorce decree. To hold otherwise would create an abnormal situation whereby the petitioner would have two husbands and Mr. Henzel, two wives, outside the State of New York. The refusal of the United States Court of Appeals to follow this rule and reasoning amounts to a denial of the full faith and credit clause.

Similarly, if Walter Henzel was not validly divorced from his wife, Illinois has held that a marriage ceremony entered into by such an undivorced individual is bigamous and void. Under the Illinois law, such attempted marriage would be nugatory for all purposes. The respondent would not be relieved of liability for alimony accruing during the period in question.

Since the questions are short and simple, we are incorporating our brief in support of this petition as a part of the petition, following immediately hereafter, and have attached as an appendix the opinion of the United States Court of Appeals for the Seventh Circuit, for the convenience of this Court. We believe this matter is of the greatest importance, and that it can be resolved expeditiously by this Court to remove any confusion existing in this field and to correct the error of the court below.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit should be granted.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Statement of Facts.

The petitioner herewith adopts the Statement of Facts set forth in the opinion of the United States Court of Appeals for the Seventh Circuit and hereinbefore quoted as the controlling facts in this case. There is no substantial dispute as to the occurrences, but only as to the conclusions of law resulting therefrom.

Assignments of Error.

1. The United States Court of Appeals for the Seventh Circuit erred in holding that the Nevada decree of divorce was entitled to full faith and credit, and in denying full faith and credit to the New York decrees.

2. The United States Court of Appeals for the Seventh Circuit erred in holding that the marriage ceremony in Nevada deprived the petitioner of her right to alimony from respondent under the Illinois decree of divorce.

Propositions of Law.

I.

A decree of divorce rendered by a state other than the domicile of the parties is entitled to full faith and credit only where the defendant is served personally in such state or appears and contests those proceedings.

Williams v. North Carolina, 325 U. S. 226, 65 S.

Ct. 1092, 89 L. Ed. 1577;

Esefwein v. Commonwealth of Pennsylvania, 325

U. S. 279, 65 S. Ct. 1118, 89 L. Ed. 1608;

Sherrer v. Sherrer, 334 U. S. 343, 68 S. Ct. 1087,

92 L. Ed. 1429;

Johnson v. Muelberger, 340 U. S. 581, 71 S. Ct.

474; 95 L. Ed. 411.

II.

Even Nevada refuses to enforce a divorce decree rendered by one of its courts where a spouse goes to Nevada solely to obtain a divorce and returns to the state of his domicile immediately upon securing the divorce.

Aspinwall v. Aspinwall, 40 Nev. 55, 184 P. 810;

Walker v. Walker, 45 Nev. 105, 198 P. 433;

Lewis v. Lewis, 50 Nev. 419, 264 P. 981, rehearing denied 50 Nev. 419, 267 P. 399;

• *Latterner v. Latterner*, 51 Nev. 285, 274 P. 194.

III.

All factual issues of domicile, good faith, and other matters bearing upon jurisdiction must be considered as foreclosed by the New York decrees, since all parties to the divorce and to the remarriage were domiciled in that state, were personally served with process, and contested such issues in those proceedings.

Williams v. North Carolina, 325 U. S. 226, 65 S.

Ct. 1092, 89 L. Ed. 1577;

Sherrer v. Sherrer, 334 U. S. 343, 68 S. Ct. 1087,

92 L. Ed. 1429.

IV.

Since Henzel was not validly divorced from his former wife, the attempted marriage of petitioner and Henzel was bigamous and void ab initio and would not destroy the rights of the petitioner under Illinois law, which controls the status of both petitioner and the respondent under the earlier Illinois decree.

Jardine v. Jardine, 291 Ill. App. 152, 9 N. E. (2d) 645;

Atkins v. Atkins, 393 Ill. 202, 65 N. E. (2d) 801;

Gordon v. Gordon, 141 Ill. 160, 30 N. E. 446;

Cartwright v. McGown, 121 Ill. 388, 12 N. E. 737.

ARGUMENT.

I.

A decree of divorce rendered by a state other than the domicile of the parties is entitled to full faith and credit only where the defendant is served personally in such state or appears and contests those proceedings.

The Court of Appeals apparently adopted the view that the decree of divorce may be valid in Nevada but invalid in New York, which threw the court into utter confusion as to how to apply the full faith and credit clause. It finally concluded by giving full faith and credit to the Nevada decree and denying such full faith and credit to the New York decrees, which latter state actually had jurisdiction of the parties.

It is our feeling that the recent decisions of this Court have wholly removed any ambiguity. The application of

full faith and credit depends upon whether or not the defendant in the divorce action had his or her day in court to contest the various issues, including jurisdiction in the divorcing state to deal with the parties and subject matter. If such defendant was personally served in that state or appeared and contested the issues, this Court has consistently held that the determination by that state is final, and the question cannot be relitigated ad infinitum. If, however, that defendant was neither served with process in that state nor had an opportunity to contest the issues upon the merits or pertaining to jurisdiction, a different result must follow. In such an instance, when the courts of the domicile subsequently adjudicate this question between the parties, in a proceeding where both parties appear and present their arguments, its determination that such divorce was invalid is final. Such decree would then be entitled to full faith and credit in all states, including the state which had granted the divorce.

This rule was clearly laid down by Mr. Justice Frankfurter in the second *Williams* case, 325 U. S. 226, 65 S. Ct. 1092 at 1095, 89 L. Ed. 1577, when he stated:

"It is one thing to reopen an issue that has been settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication. This applies also to jurisdictional questions. After a contest these cannot be relitigated between the parties."

It seemed to us that the language of this Court was very clear, but fundamentally the same question again arose in *Sherrer v. Sherrer*, 334 U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429. Mr. Chief Justice Vinson expanded these holdings, speaking as follows in 68 S. Ct. 1087 at 1089, 1093:

"That the jurisdiction of the Florida court to enter a valid decree of divorce was dependent upon petitioner's domicile in that state is not disputed. * * * Here, unlike the situation presented in *Williams v. North Carolina*, 1945, 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577, 157 A. L. R. 1366, the finding of the requisite jurisdictional facts was made in proceedings in which the defendant appeared and participated. * * * It is one thing to recognize as permissible the judicial reexamination of findings of jurisdictional fact where such findings have been made by a court of a sister State which has entered a divorce decree in ex parte proceedings. It is quite another thing to hold that the vital rights and interests involved in divorce litigation may be held in suspense pending the scrutiny by sister States of findings of jurisdictional facts made by a competent court in proceedings conducted in a manner consistent with the highest requirements of due process and in which the defendant has participated." (Italics added.)

In its last declaration in *Johnson v. Muelberger*, 340 U. S. 581, 71 S. Ct. 474, 95 L. Ed. 411, this Court used similar language:

"It is clear from the foregoing that, under our decisions, a state by virtue of the clause must give full faith and credit to an out-of-state divorce by barring either party to that divorce who has been personally served or who has entered a personal appearance from collaterally attacking the decree."

Now the effect of those decisions seems clear. If Nevada had required Dorothy Henzel to be personally served, or if she had appeared and contested the issues in that state, both New York and Illinois would be re-

quired to give full faith and credit to its decree. The same result does not follow as to an ex parte proceeding. To the contrary, when New York had jurisdiction over the parties who appeared and litigated the matter of the validity of the divorce decree, the decision of New York was absolutely binding upon them and was entitled to full faith and credit in every state in the nation—including Nevada. Marital rights and obligations must be settled with some finality. A man cannot be divorced in one state and married in another, any more than a nation can exist half slave and half free.

Forgetting the divorce situation entirely, assume that John Jones secures a judgment by confession against James Brown in Cincinnati, Ohio. At that time James Brown lives in Chicago and John Jones takes his Ohio judgment and sues Brown in Illinois upon it. Brown defends the case and affirmatively proves that the note was secured by fraud. The Illinois court not only denies relief to the plaintiff but enters a declaration that the note is void and invalid, and that the judgment procured in Ohio is unenforceable. It would be a strange anomaly if John Jones, later finding Brown in Virginia, could institute a new suit in Virginia upon the same obligation and require Brown again to establish his non-liability. Nor could Jones claim that Virginia should recognize the Ohio judgment rather than the Illinois holding.

In this case, we do not feel that Dorothy Henzel was required, after winning her case in New York, to go to Nevada to adjudicate again the same matter. Nor do we believe it was incumbent upon the petitioner here, after New York had held the Henzel divorce decree invalid and the petitioner's remarriage to be void ab initio, to go to Nevada to secure another decree to the same effect—particularly when she could not even have secured personal service upon Walter Henzel if she had done so. Nevada, as a sister state in our union, was and is bound

to give full faith and credit to the actions of New York, which had determined these questions after full appearance and contest by all parties in interest.

II.

Even Nevada refuses to enforce a divorce decree rendered by one of its courts where a spouse goes to Nevada solely to obtain a divorce and returns to the state of his domicile immediately upon securing the divorce.

Actually, it seems immaterial as to the holdings in the State of Nevada upon like questions. However, Nevada has repeatedly held that a divorce decree rendered in that state is nugatory, where a domiciliary of another state goes there merely for the purpose of procuring a divorce and departs immediately thereafter. In *Aspinwall v. Aspinwall*, 40 Nev. 55, 184 P. 810, Nevada pointed out that the question of domicile was vital in determining jurisdiction. In *Walker v. Walker*, 45 Nev. 105, 198 P. 433, the court declared:

“Residence in this state for the statutory period . . . is not sufficient to give jurisdiction, but a bona fide residence with the intention of remaining must appear.”

In the other cases cited under our “Propositions of Law” it is pointed out that the statutory requirements in that state were adopted to prevent the abuses of its laws which had led to great criticism, and that a bona fide domicile was absolutely essential in order for its court to obtain jurisdiction to grant a divorce decree.

Under these circumstances, it is apparent that Nevada would have reached a result similar to that of the State of New York under the facts of this case, and there is no

reason to believe that Nevada would deny full faith and credit to the New York holdings. Under the provisions of our Constitution, Nevada is bound by the result in New York.

III.

All factual issues of domicile, good faith, and other matters bearing upon jurisdiction must be considered as foreclosed by the New York decrees, since all parties to the divorce and to the remarriage were domiciled in that state, were personally served with process, and contested such issues in those proceedings.

Without reiterating the matters discussed under part I, supra, we believe that the language of those cases is conclusive upon this issue. This Court has repeatedly pointed out that, where jurisdictional questions have been litigated once between the parties, they cannot be relitigated in another forum. In this case, those issues were fully litigated in New York, and all the parties involved in those controversies had an opportunity to raise any question desired, either in support of the Nevada acts or in opposition thereto. The New York courts necessarily had to determine the questions of domicile, bona fides of Walter Henzel in going to Nevada, and other questions involved in the matter of jurisdiction. Thereafter, the decrees of New York were conclusive upon all persons, and those decrees must be given full faith and credit.

IV.

Since Henzel was not validly divorced from his former wife, the attempted marriage of petitioner and Henzel was bigamous and void ab initio and would not destroy the rights of the petitioner under Illinois law, which controls the status of both petitioner and the respondent under the earlier Illinois decree.

It is evident that Illinois is required to give full faith and credit to the decrees of New York, and the District Court and the Court of Appeals for Illinois are bound to the same degree. It should be pointed out, in addition, that Illinois has specifically passed upon similar questions before, and has refused to allow such a remarriage to upset the status of its domiciliaries.

In *Jardine v. Jardine*, 291 Ill. App. 152, 9 N. E. (2d) 645, an almost identical situation was presented. In 1931, Jardine left New York State and went to Reno where he established a six weeks' residence and secured a divorce from his New York wife. He left Nevada the same day and married the plaintiff in Illinois, and they both then went to New York. The plaintiff in 1935 brought an action in Illinois to have her marriage to Jardine declared a nullity upon the ground that it was bigamous and void, contending that the Reno divorce was invalid. The court declared:

"Since the Nevada court was without jurisdiction and therefore without power or authority to enter its divorce decree, such decree was not legally effective to sever the marital relation existing between the defendant and his then wife. That divorce being void, defendant was not free to remarry and his marriage afterward to plaintiff pursuant to it

was also void. The invalidity of the marriage of the parties to this proceeding was an established fact since its very inception. * * * "

Similarly, in *Cartwright v. McGown*, 121 Ill. 388, 12 N. E. 737, it was declared at page 395:

"The marriage of a man and woman, where one of them has a husband or wife by a prior marriage, who is then living and undivorced, is void, and not merely voidable. Being a nullity, no decree is necessary to void the same."

In view of these declarations it is apparent that Illinois would not hold the respondent to have been relieved of his marital obligations by reason of the entry of petitioner into a marriage ceremony which was void ab initio. Such a ceremony would not discharge the respondent under the terms of the Illinois decree requiring him to pay alimony to the petitioner "for so long as the plaintiff shall remain unmarried." No contention has been made by the respondent that he should be discharged by reason of any misconduct of the petitioner, and it becomes unnecessary to consider that question.

Conclusion.

It is apparent from the foregoing facts that the United States Court of Appeals for the Seventh Circuit misconstrued the language of this Court in its several decisions upon this subject. It seems quite clear that the divorce decree rendered by the State of Nevada was void and is not entitled to full faith and credit. However, the decrees of New York, which had jurisdiction of the parties, all of whom appeared and contested the various questions in the New York courts, are binding and entitled to recognition in all states. That being true, the petitioner was never

validly married to Walter Henzel, and the liability of the respondent for alimony continued until November, 1947.

Under those circumstances, it is apparent that the petitioner is entitled to recover the \$5,000 alimony for which action was brought, together with court costs incurred by her in pursuing her litigation in the District Court and upon appeal. It is respectfully prayed that the judgments of the District Court and of the Court of Appeals for the Seventh Circuit be reversed with directions to enter judgment in favor of the petitioner in the amount of \$5,000 and costs, together with interest from the time such amounts became due and payable or in the alternative that a writ of certiorari be issued to the United States Court of Appeals, for the Seventh Circuit, to the end that this case may be reviewed and determined by this Court, that the judgment of the United States Court of Appeals, for the Seventh Circuit be reversed and that petitioner be granted such other and further relief as may seem fitting and proper.

Respectfully submitted,

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Attorney for Petitioner.

JOHN ALAN APPLEMAN,
EDWARD D. BOLTON,

Of Counsel.

APPENDIX.

Opinion of United States Circuit Court of Appeals for the Seventh Circuit, Rendered April 26, 1951.

Before Major, *Chief Judge*, and Kerner and Finnegan, *Circuit Judges*.

KERNER, *Circuit Judge*. This appeal presents another aspect of the problem of migratory divorce. Plaintiff sued defendant, her first husband, for 40 alimony installments from August 1, 1944 to November 1, 1947, inclusive, alleged to be due under a divorce decree. Defendant denied the claim on the ground that his liability under the decree had been terminated by her remarriage on July 3, 1944. Her third marriage was to one Sherwood Sutton on November 21, 1947. The court rendered summary judgment in favor of defendant on his motion therefor, and the appeal is from the judgment.

The facts out of which the controversy arose are undisputed. Plaintiff obtained a decree of divorce from defendant in 1939 in an Illinois court. The decree provided for the payment of \$125 "on or before the first day of each calendar month * * * for so long as the plaintiff shall remain unmarried, or for so long as this decree remains in full force and effect * * *". After obtaining her divorce plaintiff moved to New York.

On July 3, 1944, plaintiff married Walter Henzel in Reno, Nevada. Henzel had on that day obtained a decree of divorce in a Nevada court from Dorothy Henzel, a New York resident. She had been served only by publication and did not appear. Immediately following the divorce and remarriage plaintiff and Henzel returned to New York. On August 3, 1944, Dorothy Henzel instituted a separate maintenance proceeding against Walter in a New York court and this proceeding resulted in a decree

in her favor, awarding separate maintenance and declaring the Nevada divorce null and void. Plaintiff had ceased living with Henzel immediately after service of summons in Dorothy Henzel's suit against him, and in January 1945 she filed suit against him for annulment of their marriage. On June 6, 1947 the New York court entered an interlocutory decree which became final three months later, declaring the nullity of the marriage of plaintiff and Henzel on the ground that he had another wife living at the time of the marriage.

Defendant had made all the alimony payments due under the Illinois decree to and including that due on May 1, 1944. After the Nevada marriage some correspondence ensued between New York counsel for plaintiff and defendant's counsel relative to further payments. Defendant claimed a credit on account of some advances previously made to plaintiff. The matter was settled by the remittance of \$180 in full on the payments due June 1 and July 1. In acknowledging the receipt of this amount by letter of September 8, 1944, plaintiff's counsel stated, "This remittance satisfies in full the alimony claim of the former Mrs. Leib." Plaintiff was remarried in November 1947.

In rendering judgment for defendant the court held that it was unnecessary to determine which of the two conflicting judgments was entitled to the full faith and credit guaranteed by the Constitution of the United States, in view of the fact that the parties had entered into a contract settling the question of accrued alimony at a time when both treated the Nevada decree as valid and in full force and effect, and that no reason appeared why the settlement and release then effected should not be held to constitute a binding obligation upon each.

We cannot agree with the reasoning of the court that acknowledgment of the remittance of the balance due on the June and July payments with the statement that it

satisfied in full the alimony claim of the former Mrs. Leib operated of itself to bar any further claims on her part. It covered an amount admittedly due on past installments—since the divorce decree required that payments be made on the first of each month, her marriage on July 3 would not entitle defendant to an apportionment of the amount for that month, and since the amount claimed by him to have been advanced to her was credited on the \$250 due for the two months, there could not be said to be any compromise of a disputed claim. Acceptance of the amounts admittedly past due could not operate to extinguish any future liability arising under the decree. *San Fillipo v. San Fillipo*, 340 Ill. App. 353. We think this is true even though it appears of record that all but one of the series of nine letters between counsel relative to the June and July payments were written after plaintiff had knowledge of the pending separate maintenance action and had ceased living with Henzel.

There remains the question as to the effect of the Nevada remarriage on defendant's obligation to pay alimony to plaintiff "for so long as (she) shall remain unmarried * * *". The answer to this, we believe, turns on the validity of the marriage in Nevada, where it was performed, rather than in New York, where it was annulled. Section 121 of the Restatement, Conflict of Laws, relating to the law governing the validity of marriage, states the rule, "Except as stated in §§131 and 132 [which we deem inapplicable here], a marriage is valid everywhere if the requirements of the marriage law of the state where the contract of marriage takes place are complied with." See also *Peirce v. Peirce*, 379 Ill. 185. And of course the validity of the Nevada remarriage turns on the validity in Nevada of the antecedent Nevada divorce of Henzel from his New York wife.

We have searched the numerous cases decided by the Supreme Court of the United States on the subject of

migratory divorce for a definitive holding as to the judicial status of such divorce in the state that decreed it. It appears to be assumed that the decree is valid and binding in the state where it is rendered. Thus Mr. Justice Frankfurter remarks in his concurring opinion, *Williams v. North Carolina I*, 317 U. S. 287, 307, "It is indisputable that Nevada's decrees here, like the Connecticut decree in the *Haddock* case, were valid and binding in the state where they were rendered." And Mr. Justice Murphy, concurring in *Williams II*, 325 U. S. 226, 239, states that "The State of Nevada has unquestioned authority, consistent with due process, to grant divorces on whatever basis it sees fit, to all who meet its statutory requirements. It is entitled, moreover, to give to its divorce decrees absolute and binding finality within the confines of its borders." And Mr. Justice Rutledge, dissenting in the same case, at page 244, comments on the fact that the Nevada judgment was not voided by the decision. "It could not be, if the same test applies to sustain it, as upholds the North Carolina convictions. It stands, with the marriages founded upon it, unimpeached." He and Mr. Justice Black, also dissenting, both call attention to the fact that the Court, in its decision, does not hold that the Nevada judgment is invalid in Nevada. Hence, in spite of the absence of a clear-cut statement in any of the main opinions of the Court as to the status of the Nevada decree in Nevada after a successful extraterritorial challenge of it, we think we may spell out authority for our assumption that it survives such challenge and remains in full force and effect within the confines of the state of Nevada until and unless it is set aside upon review in that state.

Assuming the validity of the divorce in Nevada, then the party or parties thereto resumed full marital capacity in that state. It follows that, so far as the state of Nevada is concerned, there was no inhibition against the remar-

riage of Walter Henzel in that state, and no reason appears for challenging his marriage there to plaintiff immediately after the decree of divorce was rendered. Under the terms of the Illinois decree of divorce of plaintiff and defendant, such marriage immediately terminated the obligation of the latter to continue the alimony payments required thereby. We think that obligation was not reinstated and revived by the subsequent annulment of the Nevada marriage in New York.

Judgment affirmed.